

**MINUTES**

**TENNESSEE SOLID WASTE DISPOSAL CONTROL  
BOARD MEETING  
RUTH NEFF CONFERENCE ROOM  
17<sup>TH</sup> FLOOR, L & C TOWER  
NASHVILLE, TENNESSEE**

**JULY 9, 2002**

**Board Members Present:**

Mr. Wilton Burnett  
Mr. Truman Clark  
Ms. Janet Evans  
Dr. Dennis George  
Mr. Sizwe Herring  
Mr. Joe Mahan  
Mr. J. P. Newman, Chairman  
Mr. Ken Pointer  
Mr. Robert Waddell  
Mr. Bob Whetsel  
Mr. Glenn Youngblood

All Board members were present.

Chairman Newman called the meeting to order at 9:03 a.m. After noting that a quorum was present, he welcomed the Board members and guests.

**I. SOLID WASTE DISPOSAL CONTROL BOARD MATTERS**

**A. Approval of Minutes from the April 30, 2002 Board Meeting**

Chairman Newman asked if the Board members had reviewed the Draft Minutes from the April 30, 2002 Board Meeting. Mr. Truman Clark's name was misspelled but a **motion** was made by Dr. George and **seconded** by Mr. Youngblood, **to approve the Minutes from the April 30, 2002 Board Meeting with the correction made.** The motion carried unanimously by voice vote.

**II. GENERAL BUSINESS/STAFF REPORTS**

**A. Quarterly Report on Hazardous Waste Permitting (October 1, 2001 to June 30, 2002)**

Ms. Jamie Burroughs, in the Treatment, Storage and Disposal Section of the Division of Solid Waste Management, reported on the Hazardous Waste Permitting activities for October 1, 2001 to June 30, 2002.

Chairman Newman thanked Ms. Burroughs for her presentation.

**III. REGULATORY MATTERS**

**A. Proposal to Delist American Plating (#33-619/Hamilton County) from the List of Inactive Hazardous Substances Sites**

Mr. Bob Powell, Enforcement Manager for the Division of Superfund provided Board members an overview regarding the American Plating

Site. He stated that a public hearing was held on April 18, 2002 in Chattanooga, Tennessee to receive comments from the public. No persons attended the meeting and no formal comments were received. The American Plating site is proposed for removal from the List of Inactive Hazardous Substances sites because the site has been thoroughly investigated and contaminants have been removed or otherwise contained to meet cleanup objectives; there is no longer a threat to human health or the environment from the site; and there are no longer any outstanding cost recovery issues as the owner of the site has met his apportioned share of \$16,973.00 and the remaining \$47,410.39 was assigned to the bankrupt entity and will be fund absorbed.

After review and discussion by the Board, a **motion** was made by Mr. Burnett and **seconded** by Mr. Waddell, to **Delete American Plating Site (#33-619/Hamilton County) from the List of Inactive Hazardous Substance Sites**. There was no further discussion, and the **motion** carried unanimously by a roll call vote. The vote was as follows:

<b>Burnett</b>	<b>Yes</b>	<b>Clark</b>	<b>Yes</b>
<b>Evans</b>	<b>Yes</b>	<b>George</b>	<b>Yes</b>
<b>Herring</b>	<b>Yes</b>	<b>Mahan</b>	<b>Yes</b>
<b>Newman</b>	<b>Yes</b>	<b>Pointer</b>	<b>Yes</b>
<b>Waddell</b>	<b>Yes</b>	<b>Whetsel</b>	<b>Yes</b>
<b>Youngblood</b>	<b>Yes</b>		

**B. A Proposal for Adoption Consideration – Amendments to Hazardous Waste Rules Including Fee Proposals (Revision “v-1”)**

Mr. Jerry Ingram, Manager, for the Program Development Section for the Division of Solid Waste Management’s (DSWM) Hazardous Waste Program updated the Board on Amendments to Hazardous Waste Rules including Fee Proposals (Revision “v-1”).

He distributed to the Board members copies of Comments that were submitted to the Division, Response to Comments Summary, Proposal of Rulemaking Hearing Rules, and one E-mail Comment from Dwight Hinch, Engineer with Triad.

Mr. Ingram stated that the Division of Solid Waste Management filed a Notice of Rulemaking Hearing on April 18, 2002 with the Secretary of State's Office. On June 18, 2002, at 1:00 p.m. a Public Rulemaking Hearing was held in the 17<sup>th</sup> Floor Conference Room, L&C Tower, Nashville, Tennessee regarding Hazardous Waste Rules (Revision "v-1"). The purpose of this hearing was to receive public comments on the proposed rulemaking. Notice of the hearing was published in the May 15, 2002, edition of the Tennessee Administrative Register as required by the Uniform Administrative Procedures Act. Publicity was provided by a Departmental Sunshine Notice, News Release dated May 29, 2002, which was sent to a miscellaneous list of organizations, individuals and media outlets who had been requested to be informed of the Departmental hearing. This Notice was mailed out to the Hazardous Waste Rulemaking Hearings Mailing List. It was distributed to all the treatment, storage and disposal facilities (approximately 30), all large quantity generators facilities (approximately 450) and small quantity generator facilities (approximately 700). Copies of the draft rules have been available for review at the Nashville Central Office and the Department eight Environmental Assistance Centers. Copies were available at public libraries located in Dyersburg, Kingsport, Paris, Savannah, Crossville, Manchester, Athens and Clarksville. Also, it was available on the Department's worldwide website.

At the hearing, there were approximately 14 attendees besides the Departmental personnel that signed the registration sheets. Two of the attendees provided verbal comments. There was an additional two weeks

given for written comments, which ended on July 2, 2002 at 4:30 p.m. Four additional sets of comments were received at the Nashville Central Office throughout the waiting period.

Mr. Ingram stated that prior to the Board Meeting the Response to Comments Summary and Draft Rulemaking Hearing Rules were sent through e-mail or mail for their review before the meeting. He commented that items 1, 2, 3, 7, 14, 28, 29, 30 and 31 address a number of general subject lines such as typos and technical changes.

He discussed the following comments in detail:

14. Comment: Rule 1200-1-11-.08(4)(b) 6(I) introductory language should be clarified by deleting the words “. . . based on the type of active ongoing . . .” and substituting the words “. . . for review of the following types of . . .”

Response: State agrees. See modified language.

8. Comment: It is inappropriate to collect a permit maintenance fee for permitted units that have not been constructed. Consider including a clarification that the design capacity must be constructed before a fee is assessed.

Response: State agrees. See modification in Rule 1200-1-11-.08(4)(b)2(i) and 3(i).

10. Comment: In regard to the definition of “off-site” in Rule 1200-1-11-.08(4)(b)1(v), clarify/confirm the intent.

Response: It is the intent, for purposes of the “fees” only, to make each facility receiving hazardous waste from “off-site”, an off-site facility, thereby broadening the universe of those subject to the fees. Additionally, Rule 1200-1-11-.08(4)(b)1(v) has been revised to clarify that hazardous waste received from contiguous properties will not be considered “off-site” waste.

11. Comment: In regard to Rule 1200-1-11-.08(4)(b)3, certain treatment facilities are used only a few days per year, yet are charged fees the same as a facility which may be operating every day. The Department should consider adding in a factor for frequency of use.

Response: The amount of use made of a treatment facility is the choice of the facility’s owner or operator. As such, reduced rates should not apply. However, revisions have been included in Rule 1200-1-11-.08(4)(b)1(v) to clarify that the “off-site” determination is to be made annually based on activities during the previous year. For example, if a facility’s permit or permits include provisions for receipt of “off-site” waste but no “off-site” waste has been received during the calendar year for which fees are due, then the facility would not be considered “off-site” for that year’s fee determination simply because it was permitted to receive such wastes.

19. Comment: Proposed rule 1200-1-11-.08(5)(b)3 should be deleted since a “spill” is a form of remediation waste. “Spills” should not be subject to off-site shipping fees.

Response: State disagrees. “Spills” require Division response. As such, certain related fees are deemed to be appropriate for services provided.

Mr. Ingram then provided an overview of the Rulemaking Hearing Rules. After comments from Board members, departmental staff, Dwight Hinch, Triad and Wayne Scharber, Tennessee Association Bureau, it was brought up before the Board for adoption consideration.

After review and discussion by the Board, a **motion** was made by Mr. Whetsel and **seconded** by Dr. George, **to adopt Amendments to Hazardous Waste Rules Including Fee Proposals (Revision “v-1) with modifications.** There was no further discussion, and the **motion carried unanimously by a roll call vote. The vote was as follows:**

<b>Burnett</b>	<b>Yes</b>	<b>Clark</b>	<b>Yes</b>
<b>Evans</b>	<b>Yes</b>	<b>George</b>	<b>Yes</b>
<b>Herring</b>	<b>Yes</b>	<b>Mahan</b>	<b>Yes</b>
<b>Newman</b>	<b>Yes</b>	<b>Pointer</b>	<b>Yes</b>
<b>Waddell</b>	<b>Yes</b>	<b>Whetsel</b>	<b>Yes</b>
<b>Youngblood</b>	<b>Yes</b>		

#### **IV. AGREED AND CONSENT ORDERS**

Mr. Joe Sanders stated that he had discussions with Chairman Newman, Mike Apple and others regarding how to expedite proposed Agreed Orders. The proposal was each attorney would provide the Board a brief summary attached to the front of the original Commissioner Order and Proposed Agreed Order, then the Board would review the summary. If they have any questions the Attorney

would answer their questions and then the Board could make a decision to approve or disapprove the proposed Agreed Order.

**A. A. S. Conwell, Josephine Floyd, SWM Case #98-0423 (Marshall County)**

Ms. Theresa Denton, Assistant General Counsel for the Department distributed copies of her summary, Amended Director's Order and the proposed Agreed Order.

The summary stated that the Director's Order No. 98-S004 was issued on June 18, 1998 to A.S. Conwell and Josephine Floyd for violations of the Tennessee Solid Waste Act in that land owned by the parties was being used as an illegal solid waste disposal site. The Director's Order assessed damages of \$401.95, a civil penalty of \$4,500.00, and the parties were ordered to cease using the land as a solid waste disposal site and to properly remove all waste from the site. After the Director's Order was served upon Mrs. Floyd, the Division was notified that Mr. Conwell was deceased, and that the land was owned by multiple parties other than Mrs. Floyd. After a lengthy search of county court and tax records, the other responsible landowners were identified and served with the issuance of the Amended Director's Order No. 98-S004, issued on May 23, 2001. Since the issuance of the Amended Director's Order, the parties have ceased using the land as a solid waste disposal site and have cleaned up the area to the satisfaction of the Solid Waste Division.

The proposed Agreed Order provides for the payment of a civil penalty of \$1,125.00 and damages of \$401.95, with the parties having the option of paying the balance in installments of \$50.00 per month. The parties have already paid \$961.38.



After review and discussion a **motion** was made by Mr. Mahan, and **seconded** by Mr. Youngblood, **to approve the proposed Agreed Order**. There was no further discussion, **and the motion carried unanimously by voice vote**.

**B. Capitol Chevrolet BS, HWM Case #02-0172 (Davidson County)**

Mr. Max Fleischer, Assistant General Counsel for the Department distributed copies of his summary, the original Commissioner's Order and the proposed Agreed Order to the Board members for their review.

The summary stated the on November 19, 2001; the Division of Solid Waste Management inspected the facility operated by Capitol Chevrolet, the Respondent, to determine whether the Respondent was in compliance with the law and rules pertaining to hazardous waste. The Division asserted that it discovered three violations. A follow up inspection verified the Respondent, according to the Division, had brought its facility into compliance.

The Order and Assessment in this case assessed civil penalties of \$5,000.00. The proposed Agreed Order provides for the payment of a \$3,800.00 civil penalty by the Respondent. The \$3,800.00 civil penalty represents approximately a 25% reduction of the \$5,000.00 civil penalty originally assessed in the Order and Assessment.

After review and discussion a **motion** was made by Mr. Clark, and **seconded** by Dr. George, **to approve the proposed Agreed Order**. There was no further discussion, **and the motion carried unanimously by voice vote**.

C. American Foodservice Company, SWM Case #02-0153 (Hardin County)

Mr. Max Fleischer, Assistant General Counsel for the Department distributed copies of his summary, the original Commissioner's Order and the proposed Agreed Order to the Board members for their review.

The summary stated the on June 21, 2000, the Division of Solid Waste Management inspected the facility operated by American Foodservice Co., the Respondent, to determine whether the Respondent was in compliance with the law and rules governing management of hazardous waste. The Division found 7 violations. It is significant that one of the violations the Division asserted was the illegal disposal of hazardous waste. The Division conducted a follow-up inspection on December 4, 2001 and found two repeat violations and a new violation. A third inspection verified that all violations had been corrected.

The Order and Assessment in this case assessed civil penalties of \$14,000.00. The proposed Agreed Order provides for the payment of an \$11,000.00 civil penalty by the Respondent. The \$11,000.00 civil penalty represents approximately a 20% reduction of the \$14,000.00 civil penalty originally assessed in the Order and Assessment.

After review and discussion a **motion** was made by Mr. Waddell, and **seconded** by Mr. Herring, **to approve the proposed Agreed Order**. There was no further discussion, **and the motion carried unanimously by voice vote**.

**D. Black Oxide of Tennessee, SWM Case #01-0567 (Putnam County)**

Mr. Max Fleischer, Assistant General Counsel for the Department distributed copies of his summary, the original Commissioner's Order and the proposed Agreed Order to the Board members for their review.

The summary states that on March 16, 2001, the Division of Solid Waste Management inspected the J.B. et ux Evelyn Mason farm due to a complaint alleging illegal dumping of drummed waste. The Division discovered that Dan Morphey d.b.a. Black Oxide of Tennessee, the Respondent, was responsible for the dumping of the waste. Morphey d.b.a. Black Oxide was a sole proprietorship that finished various types of metal parts and had only been in business since April 2000. Upon further investigation, the Division concluded that the waste disposed of by the Respondent was hazardous and that the Respondent had violated regulations governing the proper management and disposal of hazardous waste. Among the violations that the Division noted was the unlawful disposal of hazardous waste.

The Order and Assessment in this case assessed civil penalties of \$20,000.00. The Respondent has indicated that he is unable to pay the penalty by submitting a financial affidavit. The Respondent indicated that in the first year of operation of his mom and pop business that expenses were almost twice as much as revenues. Furthermore, the Respondent paid approximately \$8,000.00 to clean up the site on which the drums were dumped. In his appeal, the Respondent indicated that he did not believe the waste at issue was hazardous when he disposed of it.

The proposed Agreed Order provides for the payment of \$5,000.00 civil penalty by the Respondent within thirty (30) days of the date that this

Order is entered. Furthermore, the Respondent is required to pay an additional \$15,000.00 to the Division unless during the three (3) year period following the entry of this Order he does not violate any law or rule regulating hazardous waste, which was relevant to this case.

After review and discussion a **motion** was made by Mr. Pointer, and **seconded** by Mr. Burnett, **to approve the proposed Agreed Order**. There was no further discussion, **and the motion carried unanimously by voice vote**.

**E. Hawker Powersource, Inc., HWM Case #01-0566 (Hamilton County)**

Mr. Max Fleischer, Assistant General Counsel for the Department distributed copies of his summary, the original Commissioner's Order and the proposed Agreed Order to the Board members for their review.

The summary states that on January 9 and 10, 2001, the Division of Solid Waste Management inspected the facility operated by Hawker Powersource, Inc. the Respondent, to determine whether the Respondent was in compliance with the law and rules governing management of hazardous waste. The Division found 8 violations. During a follow-up inspection on May 13, 2001 the Division concluded that the Respondent had thrown rags contaminated with small amounts of MEK in a dumpster for approximately six months. The Division also asserted that it observed a repeat violation.

The Order and Assessment assessed civil penalties of \$7,300.00. The proposed Agreed Order provides for the payment of a \$5,500.00 civil penalty by the Respondent. The \$5,500.00 civil penalty represents approximately a 25% reduction of the \$7,300.00 civil penalty originally assessed in the Order and Assessment.

After review and discussion a **motion** was made by Mr. Youngblood, and **seconded** by Ms. Evans, **to approve the proposed Agreed Order**. There was no further discussion, **and the motion carried unanimously by voice vote**.

**F. Carl Gardner and Blue Tee Corporation, DSF Case #99-0118 (Roane County)**

Mr. Max Fleischer, Assistant General Counsel for the Department distributed copies of his summary and the proposed Consent Board Agreement and Order Assessing Apportioned Costs to the Board members for their review.

The summary stated that in 1998, the Rockwood Iron and Metal Site was added to the list of Inactive Hazardous Substance Sites due to testing which showed hazardous constituents at the site. The site had been operated as an automobile shredder facility by Blue Tee Corp from 1974 until 1987. In 1988, Blue Tee sold the Site to Carl Gardner. Thereafter, Gardner operated the Site as a scrap metal facility. Prior to the operation the Site was an automobile shredder facility. The Site had been used for other industrial purposes including coal mining and the manufacture of pig iron. On October 11, 1999, the Commissioner of the Tennessee Department of Environment and Conservation issued an Order to Blue Tee and Gardner to conduct a remedial investigation and feasibility study and implement a remedial action under the supervision of the Department. Both parties appealed the Order.

In the proposed Consent Order Blue Tee agrees to contain and cover the automobile shredder fluff that it left on the Site. Specifically, Blue Tee will consolidate the automobile shredder fluff, cover it with two feet of

clay and cover it with one foot of soil for the establishment of a vegetative cover. Blue Tee will also install a leachate collection system and wetlands to treat any leachate coming from the covered automobile shredder fluff.

Under the terms of the proposed Consent Order, Gardner agrees to make available cover material to Blue Tee from other properties owned and operated by him. Gardner, with Blue Tee's assistance, will be required to place land use restrictions on the deed of the property so that the cap on the material will not be disturbed.

Blue Tee agrees to maintain the capped automobile shredder fluff, the leachate collection system and the wetlands for at least five years.

After review and discussion a **motion** was made by Mr. Burnett, and **seconded** by Mr. Pointer, **to approve the proposed Consent Board Agreement and Order**. There was no further discussion, **and the motion carried unanimously by voice vote**.

## **V. OTHER BUSINESS**

The board members suggested to Mr. Mike Apple that they would like to receive several different reports quarterly or annually: The reports are as follows:

1. Reclassifications of salaries for Geologists, Specialists and managers;
2. Annual Report that's provided to EPA regarding inspections, dates, where and the violations;
3. Policy that spells out detail on fees for remediation waste;
4. Monitoring of the fees, provide oversight review on where the money is spent – numbers, personnel, and activities within the Division, where fees are used;

5. The Division needs to explore other sources of revenue that provide flexibility and equality;
6. Report to Board on a program to identify non notifiers; and
7. Quarterly accounting of budget/expenditures of fees, including administrative costs.

Janet Evans will draft a letter and send to board members for additions and/or deletions regarding that the Board had passed a 1.1 million dollar increase on fees and that this is a 20 to 25% increase and the goal is to keep qualified people, enhance salaries in order to keep them because their salaries are low compared to the surrounding states and if fee increases do not go for these purposes the Board can vote on reducing the fees back. This would be discussed at next board meeting, also.

**There was no further business by the Board or staff, a Motion was made by Mr. Waddell and seconded by Mr. Youngblood to Adjourn at 12:07 p.m. on Tuesday, July 9, 2002.**

**SUBMITTED BY:**

\_\_\_\_\_  
**Mike Apple, Technical Secretary**

\_\_\_\_\_  
**Date**

**APPROVED BY:**

\_\_\_\_\_  
**J.P. Newman, Chairman**  
**Solid Waste Disposal Control Board**

\_\_\_\_\_  
**Date**